

November 20, 1989

MEMORANDUM

TO: Richard T. Morimoto, Division Chief
Agricultural Loan Division
Department of Agriculture

FROM: Hugh R. Jones, Staff Attorney
Office of Information Practices

SUBJECT: Disclosure of Department of Agriculture's Delinquent
Loan Reports

This is in response to a request by Deputy Attorney General Larry L. Zenker to provide you with an advisory opinion concerning the disclosure of Department of Agriculture Delinquent Loan Reports under the Uniform Information Practices Act (Modified) ("UIPA"), Chapter 92F, Hawaii Revised Statutes.

ISSUES PRESENTED

(1) Whether the Department of Agriculture ("Department") must permit the public to inspect and copy its Delinquent Loan Reports under the UIPA.

(2) Whether the names of persons whose loans are delinquent may be withheld by the Department under the UIPA.

BRIEF ANSWER

Under the UIPA, the Legislature established that certain records must, as a matter of public policy, be disclosed to any person upon request. Among other government records, under the

UIPA any agency must disclose "[t]he name, address, and occupation of any person borrowing funds from a state or county loan program, and the amount, purpose, and current status of the loan." Haw. Rev. Stat. . 92F-12(a)(8) (Supp. 1988). Further, as to the categories of records listed in Section 92F-12(a), Hawaii Revised Statutes, the Legislature established that the exceptions for invasion of personal privacy and frustration of a legitimate government function were inapplicable. Accordingly, the Department is required by the UIPA to make the Delinquent Loan Reports available in their entirety for public inspection and copying.

FACTS

The Department, under Chapter 155, Hawaii Revised Statutes, is authorized to make agricultural loans to "qualified farmers."

The purpose of these loans is "to promote the agricultural development of the State by stimulating, facilitating and granting loans to qualified farmers." Haw. Rev. Stat. . 155-2 (1985).

As part of the Department's administration of its agricultural loan program, it periodically prepares a Delinquent Loan Report ("Report"). This Report, among other things, sets forth the name of the qualified farmer borrowing funds, loan number, loan origination date, total amount loaned, outstanding principal balance, last payment due date, the date of the last payment received and an "aged receivables" breakdown showing amounts delinquent over three months, six months, less than a year, over one year and over two years. In addition, the Report contains aggregate data on delinquencies by county.

The Department is concerned that disclosure of the names of the eligible farmers who are delinquent in their loan payments may constitute a "clearly unwarranted invasion of personal privacy" under the UIPA.

DISCUSSION

The UIPA, the State's new open records law, became effective on July 1, 1989. Under the UIPA, "[a]ll government records are open to public inspection unless access is

restricted or closed by law." Haw. Rev. Stat. . 92F-11(a) (Supp. 1988). In addition, Section 92F-12(a), Hawaii Revised Statutes sets forth "a list of records (or categories of records) which the Legislature declares, as a matter of public policy, shall be disclosed." S. Conf. Comm. Rep. No. 235, 14th Leg. Reg. Sess., Haw. S.J. 689, 690 (1988). With respect to the records pertaining to government loan programs, Section 92F-12 (a)(8), Hawaii Revised Statutes provides:

(a)Any provision to the contrary notwithstanding each agency shall make available for public inspection and duplication during regular business hours:

....

(8)Name, address, and occupation of any person borrowing funds from a state or county loan program, and the amount, purpose and current status of the loan;

The Department appears concerned that disclosure of the names of eligible farmers who are delinquent in their loan payments may constitute a "clearly unwarranted invasion of personal privacy" under Section 92F-13(1), Hawaii Revised Statutes, thereby authorizing the Department to delete such information in response to a records request under the UIPA. However, a review of the inter-relationship between Sections 92F-12(a) and 92F-13, Hawaii Revised Statutes, reveals that the names of delinquent borrowers must be disclosed. Specifically, the plain language of 92F-12(a), "any provision to the contrary notwithstanding, ..." suggests that the categories of records set forth thereafter are not subject to the exceptions set forth at . 92F-13. A review of the legislative history further compels this conclusion:

[T]he bill will provide, in section -12, a list of records (or categories of records) which the Legislature declares, as a matter of public policy, shall be disclosed. As to these records, the exceptions such as for personal privacy and frustration of legitimate governmental purpose are inapplicable This list merely

addresses some particular cases by unambiguously requiring disclosure.

S. Conf. Comm. Rep. No. 235, 14th Leg. Reg. Sess., Haw. S.J. 689, 690 (1988) (emphasis added).

Further, before the passage of the UIPA, the Governor's Committee on Public Records and Privacy reviewed the subject of public access to state loan program records. The Governor's Committee noted "this information is not available to the public" and that those that seek access assert that "these are taxpayers funds and that taxpayers should be able to see how those funds are spent." Report of Governor's Committee on Public Records and Privacy, Vol. I., p. 114-115 (1987). Recognizing the possible existence of a legitimate privacy interest in some information concerning loan programs, the Committee recommended that "certain information (name, occupation, amount of loan and purpose of loan) should be public ... [o]ther material would then fall under general standards as to personal information and public record, [sic] or under a new balancing test if one is adopted." Id. at 115.

It appears that in drafting the provisions of subsection (8) of Haw. Rev. Stat. . 92F-12(a), the Legislature acted upon the Committee's recommendation¹ and opted to require that certain information be public, including the name and loan status of those receiving government loans, without regard to potential invasions of privacy caused by such disclosure. Since the Report contains information reflecting the borrowers' names and current status of loans and otherwise non-protected data, it must be available for public inspection in its entirety under the UIPA.

CONCLUSION

Under Section 92F-12(a)(8), Hawaii Revised Statutes, agencies must make available for public inspection and copying

¹ The legislative history also reflects that the Committee's report and the recommendations contained therein were carefully considered in drafting the UIPA. See, S. Comm. Rep. No. 2580, 14th Leg., Reg. Sess., Haw. S.J. 1093, 1095 (1988).

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"the name, address ... and current status" of those receiving government loans. As to this information, the exceptions set forth at Section 92F-13, Hawaii Revised Statutes do not apply. The information set forth in the Department's report is therefore subject to mandatory disclosure upon request of "any person" under the UIPA.

Hugh R. Jones
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HRJ:sc
cc: Larry L. Zenker
Deputy Attorney General

APPROVED:

Kathleen A. Callaghan
Director